

1-1 By: Birdwell, et al. S.B. No. 13  
1-2 (In the Senate - Filed March 11, 2021; March 11, 2021, read  
1-3 first time and referred to Committee on Natural Resources &  
1-4 Economic Development; April 12, 2021, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 9,  
1-6 Nays 0; April 12, 2021, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>Birdwell</u>	X		
1-10	<u>Zaffirini</u>	X		
1-11	<u>Alvarado</u>	X		
1-12	<u>Hancock</u>	X		
1-13	<u>Hinojosa</u>	X		
1-14	<u>Hughes</u>	X		
1-15	<u>Kolkhorst</u>	X		
1-16	<u>Lucio</u>	X		
1-17	<u>Seliger</u>	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 13 By: Birdwell

1-19 A BILL TO BE ENTITLED  
1-20 AN ACT

1-21 relating to state contracts with and investments in certain  
1-22 companies that boycott energy companies.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subtitle A, Title 8, Government Code, is amended  
1-25 by adding Chapter 809 to read as follows:

1-26 CHAPTER 809. PROHIBITION ON INVESTMENT IN FINANCIAL COMPANIES THAT

1-27 BOYCOTT CERTAIN ENERGY COMPANIES

1-28 SUBCHAPTER A. GENERAL PROVISIONS

1-29 Sec. 809.001. DEFINITIONS. In this chapter:

1-30 (1) "Boycott energy company" means refusing to deal  
1-31 with, terminating business activities with, or otherwise taking any  
1-32 action that is, solely or primarily, intended to penalize, inflict  
1-33 economic harm on, or limit commercial relations with a company  
1-34 because the company:

1-35 (A) engages in the exploration, production,  
1-36 utilization, transportation, sale, or manufacturing of fossil  
1-37 fuel-based energy and does not commit or pledge to meet  
1-38 environmental standards beyond applicable federal and state law; or

1-39 (B) does business with a company described by  
1-40 Paragraph (A).

1-41 (2) "Company" means a for-profit sole proprietorship,  
1-42 organization, association, corporation, partnership, joint  
1-43 venture, limited partnership, limited liability partnership, or  
1-44 limited liability company, including a wholly owned subsidiary,  
1-45 majority-owned subsidiary, parent company, or affiliate of those  
1-46 entities or business associations, that exists to make a profit.

1-47 (3) "Direct holdings" means, with respect to a  
1-48 financial company, all securities of that financial company held  
1-49 directly by a state governmental entity in an account or fund in  
1-50 which a state governmental entity owns all shares or interests.

1-51 (4) "Financial company" means a publicly traded  
1-52 financial services, banking, or investment company.

1-53 (5) "Indirect holdings" means, with respect to a  
1-54 financial company, all securities of that financial company held in  
1-55 an account or fund, such as a mutual fund, managed by one or more  
1-56 persons not employed by a state governmental entity, in which the  
1-57 state governmental entity owns shares or interests together with  
1-58 other investors not subject to the provisions of this chapter. The  
1-59 term does not include money invested under a plan described by  
1-60 Section 401(k) or 457 of the Internal Revenue Code of 1986.

2-1                   (6) "Listed financial company" means a financial  
 2-2 company listed by the comptroller under Section 809.051.

2-3                   (7) "State governmental entity" means:

2-4                   (A) the Employees Retirement System of Texas,  
 2-5 including a retirement system administered by that system;

2-6                   (B) the Teacher Retirement System of Texas;

2-7                   (C) the Texas Municipal Retirement System;

2-8                   (D) the Texas County and District Retirement  
 2-9 System;

2-10                  (E) the Texas Emergency Services Retirement  
 2-11 System; and

2-12                  (F) the permanent school fund.

2-13                  Sec. 809.002. OTHER LEGAL OBLIGATIONS. With respect to  
 2-14 actions taken in compliance with this chapter, including all good  
 2-15 faith determinations regarding financial companies as required by  
 2-16 this chapter, a state governmental entity and the comptroller are  
 2-17 exempt from any conflicting statutory or common law obligations,  
 2-18 including any obligations with respect to making investments,  
 2-19 divesting from any investment, preparing or maintaining any list of  
 2-20 financial companies, or choosing asset managers, investment funds,  
 2-21 or investments for the state governmental entity's securities  
 2-22 portfolios.

2-23                  Sec. 809.003. INDEMNIFICATION OF STATE GOVERNMENTAL  
 2-24 ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an  
 2-25 action, inaction, decision, divestment, investment, financial  
 2-26 company communication, report, or other determination made or taken  
 2-27 in connection with this chapter, the state shall, without regard to  
 2-28 whether the person performed services for compensation, indemnify  
 2-29 and hold harmless for actual damages, court costs, and attorney's  
 2-30 fees adjudged against, and defend:

2-31                  (1) an employee, a member of the governing body, or any  
 2-32 other officer of a state governmental entity;

2-33                  (2) a contractor of a state governmental entity;

2-34                  (3) a former employee, a former member of the  
 2-35 governing body, or any other former officer of a state governmental  
 2-36 entity who was an employee, member of the governing body, or other  
 2-37 officer when the act or omission on which the damages are based  
 2-38 occurred;

2-39                  (4) a former contractor of a state governmental entity  
 2-40 who was a contractor when the act or omission on which the damages  
 2-41 are based occurred; and

2-42                  (5) a state governmental entity.

2-43                  Sec. 809.004. NO PRIVATE CAUSE OF ACTION. (a) A person,  
 2-44 including a member, retiree, or beneficiary of a retirement system  
 2-45 to which this chapter applies, an association, a research firm, a  
 2-46 financial company, or any other person may not sue or pursue a  
 2-47 private cause of action against the state, a state governmental  
 2-48 entity, a current or former employee, a member of the governing  
 2-49 body, or any other officer of a state governmental entity, or a  
 2-50 contractor of a state governmental entity, for any claim or cause of  
 2-51 action, including breach of fiduciary duty, or for violation of any  
 2-52 constitutional, statutory, or regulatory requirement in connection  
 2-53 with any action, inaction, decision, divestment, investment,  
 2-54 financial company communication, report, or other determination  
 2-55 made or taken in connection with this chapter.

2-56                  (b) A person who files suit against the state, a state  
 2-57 governmental entity, an employee, a member of the governing body,  
 2-58 or any other officer of a state governmental entity, or a contractor  
 2-59 of a state governmental entity, is liable for paying the costs and  
 2-60 attorney's fees of a person sued in violation of this section.

2-61                  Sec. 809.005. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT  
 2-62 WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. A state  
 2-63 governmental entity is not subject to a requirement of this chapter  
 2-64 if the state governmental entity determines that the requirement  
 2-65 would be inconsistent with its fiduciary responsibility with  
 2-66 respect to the investment of entity assets or other duties imposed  
 2-67 by law relating to the investment of entity assets, including the  
 2-68 duty of care established under Section 67, Article XVI, Texas  
 2-69 Constitution.

3-1 Sec. 809.006. RELIANCE ON FINANCIAL COMPANY RESPONSE. The  
 3-2 comptroller and a state governmental entity may rely on a financial  
 3-3 company's response to a notice or communication made under this  
 3-4 chapter without conducting any further investigation, research, or  
 3-5 inquiry.

3-6 SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

3-7 Sec. 809.051. LISTED FINANCIAL COMPANIES. (a) The  
 3-8 comptroller shall prepare and maintain, and provide to each state  
 3-9 governmental entity, a list of all financial companies that boycott  
 3-10 energy companies. In maintaining the list, the comptroller may:

3-11 (1) review and rely, as appropriate in the  
 3-12 comptroller's judgment, on publicly available information  
 3-13 regarding financial companies, including information provided by  
 3-14 the state, nonprofit organizations, research firms, international  
 3-15 organizations, and governmental entities; and

3-16 (2) request written verification from a financial  
 3-17 company that it does not boycott energy companies and rely, as  
 3-18 appropriate in the comptroller's judgment and without conducting  
 3-19 further investigation, research, or inquiry, on a financial  
 3-20 company's written response to the request.

3-21 (b) A financial company that fails to provide to the  
 3-22 comptroller a written verification under Subsection (a)(2) before  
 3-23 the 61st day after receiving the request from the comptroller is  
 3-24 presumed to be boycotting energy companies.

3-25 (c) The comptroller shall update the list annually or more  
 3-26 often as the comptroller considers necessary, but not more often  
 3-27 than quarterly, based on information from, among other sources,  
 3-28 those listed in Subsection (a).

3-29 (d) Not later than the 30th day after the date the list of  
 3-30 financial companies that boycott energy companies is first provided  
 3-31 or updated, the comptroller shall file the list with the presiding  
 3-32 officer of each house of the legislature and the attorney general  
 3-33 and post the list on a publicly available Internet website.

3-34 Sec. 809.052. IDENTIFICATION OF INVESTMENT IN LISTED  
 3-35 FINANCIAL COMPANIES. Not later than the 30th day after the date a  
 3-36 state governmental entity receives the list provided under Section  
 3-37 809.051, the state governmental entity shall notify the comptroller  
 3-38 of the listed financial companies in which the state governmental  
 3-39 entity owns direct holdings or indirect holdings.

3-40 Sec. 809.053. ACTIONS RELATING TO LISTED FINANCIAL COMPANY.

3-41 (a) For each listed financial company identified under Section  
 3-42 809.052, the state governmental entity shall send a written notice:

3-43 (1) informing the financial company of its status as a  
 3-44 listed financial company;

3-45 (2) warning the financial company that it may become  
 3-46 subject to divestment by state governmental entities after the  
 3-47 expiration of the period described by Subsection (b); and

3-48 (3) offering the financial company the opportunity to  
 3-49 clarify its activities related to companies described by Sections  
 3-50 809.001(1)(A) and (B).

3-51 (b) Not later than the 90th day after the date the financial  
 3-52 company receives notice under Subsection (a), the financial company  
 3-53 must cease boycotting energy companies in order to avoid qualifying  
 3-54 for divestment by state governmental entities.

3-55 (c) If, during the time provided by Subsection (b), the  
 3-56 financial company ceases boycotting energy companies, the  
 3-57 comptroller shall remove the financial company from the list  
 3-58 maintained under Section 809.051 and this chapter will no longer  
 3-59 apply to the financial company unless it resumes boycotting energy  
 3-60 companies.

3-61 (d) If, after the time provided by Subsection (b) expires,  
 3-62 the financial company continues to boycott energy companies, the  
 3-63 state governmental entity shall sell, redeem, divest, or withdraw  
 3-64 all publicly traded securities of the financial company, except  
 3-65 securities described by Section 809.055, according to the schedule  
 3-66 provided by Section 809.054.

3-67 Sec. 809.054. DIVESTMENT OF ASSETS. (a) A state  
 3-68 governmental entity required to sell, redeem, divest, or withdraw  
 3-69 all publicly traded securities of a listed financial company shall

4-1 comply with the following schedule:

4-2 (1) at least 50 percent of those assets must be removed  
 4-3 from the state governmental entity's assets under management not  
 4-4 later than the 180th day after the date the financial company  
 4-5 receives notice under Section 809.053 or Subsection (b) unless the  
 4-6 state governmental entity determines, based on a good faith  
 4-7 exercise of its fiduciary discretion and subject to Subdivision  
 4-8 (2), that a later date is more prudent; and

4-9 (2) 100 percent of those assets must be removed from  
 4-10 the state governmental entity's assets under management not later  
 4-11 than the 360th day after the date the financial company receives  
 4-12 notice under Section 809.053 or Subsection (b).

4-13 (b) If a financial company that ceased boycotting energy  
 4-14 companies after receiving notice under Section 809.053 resumes its  
 4-15 boycott, the state governmental entity shall send a written notice  
 4-16 to the financial company informing it that the state governmental  
 4-17 entity will sell, redeem, divest, or withdraw all publicly traded  
 4-18 securities of the financial company according to the schedule in  
 4-19 Subsection (a).

4-20 (c) Except as provided by Subsection (a), a state  
 4-21 governmental entity may delay the schedule for divestment under  
 4-22 that subsection only to the extent that the state governmental  
 4-23 entity determines, in the state governmental entity's good faith  
 4-24 judgment, and consistent with the entity's fiduciary duty, that  
 4-25 divestment from listed financial companies will likely result in a  
 4-26 loss in value or a benchmark deviation described by Section  
 4-27 809.056(a). If a state governmental entity delays the schedule for  
 4-28 divestment, the state governmental entity shall submit a report to  
 4-29 the presiding officer of each house of the legislature and the  
 4-30 attorney general stating the reasons and justification for the  
 4-31 state governmental entity's delay in divestment from listed  
 4-32 financial companies. The report must include documentation  
 4-33 supporting its determination that the divestment would result in a  
 4-34 loss in value or a benchmark deviation described by Section  
 4-35 809.056(a), including objective numerical estimates. The state  
 4-36 governmental entity shall update the report every six months.

4-37 Sec. 809.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. A  
 4-38 state governmental entity is not required to divest from any  
 4-39 indirect holdings in actively or passively managed investment funds  
 4-40 or private equity funds. The state governmental entity shall  
 4-41 submit letters to the managers of each investment fund containing  
 4-42 listed financial companies requesting that they remove those  
 4-43 financial companies from the fund or create a similar actively or  
 4-44 passively managed fund with indirect holdings devoid of listed  
 4-45 financial companies. If a manager creates a similar fund with  
 4-46 substantially the same management fees and same level of investment  
 4-47 risk and anticipated return, the state governmental entity may  
 4-48 replace all applicable investments with investments in the similar  
 4-49 fund in a time frame consistent with prudent fiduciary standards  
 4-50 but not later than the 450th day after the date the fund is created.

4-51 Sec. 809.056. AUTHORIZED INVESTMENT IN LISTED FINANCIAL  
 4-52 COMPANIES. (a) A state governmental entity may cease divesting  
 4-53 from one or more listed financial companies only if clear and  
 4-54 convincing evidence shows that:

4-55 (1) the state governmental entity has suffered or will  
 4-56 suffer a loss in the hypothetical value of all assets under  
 4-57 management by the state governmental entity as a result of having to  
 4-58 divest from listed financial companies under this chapter; or

4-59 (2) an individual portfolio that uses a  
 4-60 benchmark-aware strategy would be subject to an aggregate expected  
 4-61 deviation from its benchmark as a result of having to divest from  
 4-62 listed financial companies under this chapter.

4-63 (b) A state governmental entity may cease divesting from a  
 4-64 listed financial company as provided by this section only to the  
 4-65 extent necessary to ensure that the state governmental entity does  
 4-66 not suffer a loss in value or deviate from its benchmark as  
 4-67 described by Subsection (a).

4-68 (c) Before a state governmental entity may cease divesting  
 4-69 from a listed financial company under this section, the state

5-1 governmental entity must provide a written report to the  
5-2 comptroller, the presiding officer of each house of the  
5-3 legislature, and the attorney general setting forth the reason and  
5-4 justification, supported by clear and convincing evidence, for  
5-5 deciding to cease divestment or to remain invested in a listed  
5-6 financial company.

5-7 (d) The state governmental entity shall update the report  
5-8 required by Subsection (c) semiannually, as applicable.

5-9 (e) This section does not apply to reinvestment in a  
5-10 financial company that is no longer a listed financial company.

5-11 Sec. 809.057. PROHIBITED INVESTMENTS. Except as provided  
5-12 by Section 809.056, a state governmental entity may not acquire  
5-13 securities of a listed financial company.

5-14 SUBCHAPTER C. REPORT; ENFORCEMENT

5-15 Sec. 809.101. REPORT. Not later than January 5 of each  
5-16 year, each state governmental entity shall file a publicly  
5-17 available report with the presiding officer of each house of the  
5-18 legislature and the attorney general that:

5-19 (1) identifies all securities sold, redeemed,  
5-20 divested, or withdrawn in compliance with Section 809.054;

5-21 (2) identifies all prohibited investments under  
5-22 Section 809.057; and

5-23 (3) summarizes any changes made under Section 809.055.

5-24 Sec. 809.102. ENFORCEMENT. The attorney general may bring  
5-25 any action necessary to enforce this chapter.

5-26 SECTION 2. Subtitle F, Title 10, Government Code, is  
5-27 amended by adding Chapter 2274 to read as follows:

5-28 CHAPTER 2274. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING  
5-29 CERTAIN ENERGY COMPANIES

5-30 Sec. 2274.001. DEFINITIONS. In this chapter:

5-31 (1) "Boycott energy company" has the meaning assigned  
5-32 by Section 809.001.

5-33 (2) "Company" has the meaning assigned by Section  
5-34 809.001, except that the term does not include a sole  
5-35 proprietorship.

5-36 (3) "Governmental entity" has the meaning assigned by  
5-37 Section 2251.001.

5-38 Sec. 2274.002. PROVISION REQUIRED IN CONTRACT. (a) This  
5-39 section applies only to a contract that:

5-40 (1) is between a governmental entity and a company  
5-41 with 10 or more full-time employees; and

5-42 (2) has a value of \$100,000 or more that is to be paid  
5-43 wholly or partly from public funds of the governmental entity.

5-44 (b) A governmental entity may not enter into a contract with  
5-45 a company for goods or services unless the contract contains a  
5-46 written verification from the company that it:

5-47 (1) does not boycott energy companies; and

5-48 (2) will not boycott energy companies during the term  
5-49 of the contract.

5-50 SECTION 3. Chapter 2274, Government Code, as added by this  
5-51 Act, applies only to a contract entered into on or after the  
5-52 effective date of this Act. A contract entered into before that  
5-53 date is governed by the law in effect on the date the contract was  
5-54 entered into, and the former law is continued in effect for that  
5-55 purpose.

5-56 SECTION 4. This Act takes effect September 1, 2021.

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